

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

D.S. and M.S. (“the Plaintiffs”) appeal the November 21, 2011 Order of Administrative Law Judge Deidre Johnson regarding the provision of free appropriate public education to the Plaintiffs’ son J.S. *See* Dkt. No. 1. At the Initial Case Management Conference held on August 1, 2012, the Court, in consultation with the parties, set the deadline to file a motion to amend the complaint or add parties on October 24, 2012, and the deadline to file the Plaintiffs’ appeal brief on November 1, 2012. *See* Dkt. No. 23 (Minute Entry and Case Management Order).

¹ The Plaintiffs did not properly notice their motion to amend the complaint. *See* Dkt. No. 28. The Plaintiffs also failed to contact the Courtroom Deputy to schedule a hearing date. The Court

28. The opposition is due November 7, 2012, and the reply is due November 14, 2012. *See id.*; Civil Local Rule 7-3. The Court scheduled a hearing for the earliest available date: January 24, 2013, the same date as the hearing on the Plaintiffs' appeal. *See* Dkt. No. 31.

After the close of business on October 31, 2012, the day before the Plaintiffs appeal brief was due, the Plaintiffs filed an ex parte motion to extend time for filing the appeal brief. *See* Dkt. No. 30. Ex parte motions are not a proper method for requesting extensions of time. The Plaintiffs ex parte motion argues that the Court should extend the deadline to file the Plaintiffs' appeal brief until after the Court rules on the Plaintiffs' pending motion to amend because "amendment affects the content of the appeal brief and submitting the appeal brief prior to the ruling would cause great prejudice to the Plaintiff." *Id.*

On November 1, 2012, at 2:45 p.m., Plaintiffs' counsel emailed the Courtroom Deputy to ask whether the deadline to file the Plaintiffs' appeal brief was extended until after the January 24, 2012 hearing on the Plaintiffs' motion to amend the complaint. The Plaintiffs apparently presumed that the deadline was extended because the Plaintiffs did not file their appeal brief on November 1, 2012.

The Court will not extend the deadline for filing the Plaintiffs' appeal brief until after the Court has ruled on the Plaintiffs' motion to amend for two reasons. First, the Plaintiffs agreed to the Court's deadlines for filing a motion to amend and filing the Plaintiffs' appeal brief. *See* Dkt. No. 23. The Plaintiffs agreed to these deadlines despite having knowledge of J.S.'s age and impending birthday prior to the Initial Case Management Conference. *See* Dkt. No. 1 at ¶ 14. Second, extending the deadline to file the Plaintiffs' appeal brief until after the January 24, 2012 hearing on the Plaintiffs' motion to amend would result in an unreasonable delay in the case schedule.

However, in light of the confusion of Plaintiffs' counsel, the Court will accept the Plaintiffs' appeal brief, provided that it is filed by Monday, November 5, 2012. The Plaintiffs'

instructs the Plaintiffs' counsel to review the Civil Local Rules and the undersigned judge's Standing Order before filing any further motions.

1 appeal brief may address the alternative possibilities that the Plaintiffs' motion to add J.S. as party
2 is granted or denied.

3 The Plaintiffs' ex parte motion also argues that the Plaintiffs have not received a Bates-
4 stamped copy of the administrative record to cite in their brief. *See* Dkt. No. 30. The Plaintiffs
5 therefore request an extension of time until after the Defendants have provided a Bates-stamped
6 copy of the administrative record. The Plaintiffs were participants in the administrative process
7 and have the administrative record. Moreover, the Defendants lodged the administrative record
8 with the Court on August 23, 2012, a week before the Court's deadline to do so. *See* Dkt. No. 25.
9 As explained in the Defendants' notice of lodging, the administrative record consists of six
10 transcripts, each consisting of consecutively numbered pages. *See id.* The parties may cite to the
11 administrative record using this pagination system. Accordingly, there is no need for the
12 Defendants to provide the Plaintiffs with a Bates-stamped copy of the administrative record.

13 In sum, the Court ORDERS the Plaintiffs to file their appeal brief by Monday, November 5,
14 2012. The Court CONTINUES the deadline to file the Defendants' opposition brief to December
15 19, 2012, and CONTINUES the deadline to file the Plaintiffs' reply brief to January 8, 2013. All
16 other deadlines remain unchanged. The Court will not consider any further ex parte motions to
17 extend time.

18 **IT IS SO ORDERED.**

19 Dated: November 2, 2012

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21 LUCY H. KOH
22 United States District Judge
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